



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

[Docket No. USCG-2023-0015]

RIN 1625-AA08

### Special Local Regulation; Horsepower on the Hudson, Hudson River, Castleton-on-Hudson, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishing a special local regulation on certain waters of the Hudson River near Castleton-on-Hudson, NY, in support of the Horsepower on the Hudson event, reoccurring annually one day in August. This action is necessary to ensure the safety of participants, participant vessels, spectators, and mariners transiting the area from the dangers associated with vessels operating at high speeds during the Horsepower on the Hudson event. This proposed rulemaking would allow the Coast Guard to enforce vessel movements within two regulated areas in a portion of the Hudson River near Castleton-on-Hudson, NY. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before

**[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** You may submit comments identified by docket number USCG-2023-0015 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public

Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION**

section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email

MSTC S. Stevenson, Waterways Management Division, U.S. Coast Guard; telephone 718-354-

4197, email D01-SMB-SecNY-Waterways@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port New York
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
LLNR	Light List Number
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

The Coast Guard established the first temporary Special Local Regulation titled “Special Local Regulation; 2022 Horsepower on the Hudson, Hudson River, Castleton, NY,” that was published in the Federal Register (87 FR 30800) on May 20, 2022. On December 19, 2022, the Coast Guard received an application for a Marine Event from the Castleton Boat Club for the Horsepower on the Hudson, which is expected to be an annually reoccurring event. The event will take place on the Hudson River near Castleton-on-the-Hudson, one day in August every year. The Captain of the Port New York (COTP) has determined that this event being held near marine traffic poses a significant risk to public safety and property and that establishing a permanent Special Local Regulation will more appropriately ensure adequate protections in place during the event. The event will consist of approximately 40 participating vessels that will transit by the Castleton Boat Club at speeds exceeding 100 mph. The participating vessels are

expected to maneuver at high speeds along the eastern shore of the Hudson River along Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Lighted Buoy 204 (LLNR 38910) outside of the navigable channel. The event is also expected to have approximately 20 spectator crafts on the opposite side of the river from Hudson River Lighted Buoy 201 (LLNR 38903) to Hudson River Lighted Buoy 205 (LLNR 38915) outside of the navigable channel.

The combination of the vessels operating at high speeds during the event and an anticipated number of spectator crafts has the potential to result in serious injuries or fatalities. To protect the safety of all waterway users including event participants and spectators, this proposed rule would establish two regulated areas outside of the navigational channel that is not expected to impede routine vessel traffic within the navigational channel on the Hudson River. This proposed rulemaking aims to ensure the safety of participants, non-participants, and transiting vessels on the navigable waters in the vicinity of the high-speed race route and the spectator zone before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under the authority of 46 U.S.C. 70041.

### **III. Discussion of Proposed Rule**

The Coast Guard is proposing to establish a special local regulation on the Hudson River in the vicinity of Castleton-on-the-Hudson, NY, encompassing all navigable waters of the Hudson River east of the navigable channel from the Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Lighted Buoy 204 (LLNR 38910) outside of the channel, and all waters of the Hudson River westward of the navigational channel from Hudson River Lighted Buoy 201 (LLNR 38903) to Hudson River Lighted Buoy 205 (LLNR 38915) outside of the channel. The event will take place annually one day in August. The high-speed demonstration will consist of approximately 40 vessels that will transit by the Castleton Boat Club at speeds exceeding 100 mph. The special local regulation will include two regulated areas that will be located outside

of the navigational channel: a *high-speed area* and a *spectator area*. The *high-speed area* would encompass all navigable waters of the Hudson River east of the navigational channel from Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Lighted Buoy 204 (LLNR 38910) where all persons and vessels, except those persons and vessels participating in the high-speed boat demonstration event, would be prohibited from entering, transiting through, or remaining within. Additionally, no participant may transit at high speed inside this zone when vessels are transiting through the navigational channel. The *spectator area* would encompass all navigable waters of the Hudson River from Hudson River Lighted Buoy 201 (LLNR 38903) to Hudson River Lighted Buoy 205 (LLNR 38915) west of the navigable channel.

The duration of enforcement restrictions to the waterway in the areas is intended to ensure the safety of vessels, participants, spectators, and those transiting the area during the Horsepower on the Hudson event. Navigation rules would apply at all times within the areas. The Coast Guard would provide notice of the special local regulation's exact date and time by Local Notice to Mariners. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. A summary of our analyses based on these statutes and Executive Orders follows.

##### ***A. Regulatory Planning and Review***

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This proposed rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this proposed rule has not been

reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the special local regulation. With this special local regulation, the Coast Guard intends to allow marine traffic to transit via the main navigable channel. In addition, although this rule restricts access to the waters encompassed by the local regulation, the effect of this rule will not be significant because the local waterway users will be notified in advance via public Broadcast Notice to Mariners to ensure the special local regulation will result in minimum impact as the main navigation channel will be maintained allowing vessels to transit Hudson River outside of the high speed area or the spectator area. Mariners will therefore be able to plan and either transit through the available transit area or outside the periods of enforcement of the special local regulation. Additionally, mariners may be able to transit the high-speed area or spectator areas with approval from the COTP or designated representative. The entities most likely affected are commercial vessels and pleasure craft engaged in recreational activities.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. While the special local

regulation is in effect, vessel traffic can pass safely using the main ship channel of the Hudson River. The maritime public will be advised in advance of this special local regulation via Local Notice to Mariners and Broadcast Notices to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area lasting five hours that would limit persons or vessels from transiting certain regulated areas during the scheduled event. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A

preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2023-0015 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then



select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

#### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add §100.111 to read as follows:

#### **§ 100.111 Special Local Regulation; Horsepower on the Hudson, Hudson River, Castleton-on-Hudson, NY.**

(a) *Regulated areas.* The regulations in this section apply to the following regulated areas:

(1) *High speed area.* All navigable waters of the Hudson River from Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Lighted Buoy 204 (LLNR 38910) east of the navigable channel shoreward outside of the navigational channel.

(2) *Spectator area.* All navigable waters of the Hudson River from Hudson River Lighted Buoy 201 (LLNR 38903) to Hudson River Lighted Buoy 205 (LLNR 38915) west of the navigable channel shoreward outside of the navigational channel.

(b) *Definitions.* As used in this section—

*Designated Representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the Special Local Regulation.

*Participant* means all persons and vessels registered with the event sponsor as a participant in the race.

*Spectator* means any person or vessel including human-powered craft, which is not designated by the sponsor as a support vessel, in the vicinity of the event with the primary purpose of witnessing the event. Spectator vessels can observe the marine event from the designated spectator area.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

(2) No participant may transit at high-speed inside the high-speed zone when vessels are in or transiting through the navigational channel.

(3) To seek permission to enter, contact the COTP or the designated representative via VHF-FM Marine Channel 16 or by contacting the Coast Guard Sector New York command center

at (718) 354-4356 or on VHF 16 to obtain permission. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(d) *Effective period.* This special local regulation is in effect annually on a date and time published in the Local Notice to Mariners.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public through Local Notice to Mariners and Broadcast Notices to Mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: March 8, 2023.

**Z. Merchant,**

*Captain, U.S. Coast Guard,*

*Captain of the Port New York.*

[FR Doc. 2023-05332 Filed: 3/16/2023 8:45 am; Publication Date: 3/17/2023]